

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1824 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

BABURAO TULSIRAO MARATHA

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

Ms.Siddhi S. Talati, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/11/98

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India in the nature of Habeas Corpus petition has been filed by the petitioner for setting

aside his alleged illegal detention order dated 23.2.1998.

2. The order of detention has been passed under the provision of Section 9(1) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA'). The grounds of detention were supplied to the detenu petitioner. According to the grounds of detention as many as eight cases under the Prohibition Act were registered against the petitioner since 1997 to 1998. It was alleged that the petitioner was a bootlegger indulging in illegal business of indigenous country made liquor. He was enlarged on bail in the aforesaid eight cases. The Detaining Authority was further of the view that indulging in such business was likely to injure public health and was also likely to repeat the incident of Latthakand in future. This activity of the petitioner was considered by the Detaining Authority to be prejudicial and to disturbing the public order in the locality. In addition to this, two specific incidents dated 15.1.1998 and 5.2.1998 were given in the grounds of detention. These incidents, according to the Detaining Authority, created disturbance of public order. Since the witnesses were affraid and terrorised from the activity of the petitioner, their names and identities were withheld by the Detaining Authority in public interest under Section 9(2) of the PASA Act.

3. The matter was referred to the Advisory Board. Upon the opinion of the Advisory Board the detention order was confirmed. The petitioner made representation to the State Government through Advocate. However, since the representation was not signed by the petitioner it was returned by the State Government to the Advocate for obtaining signature of the petitioner. Thereafter no response was received from the Advocate of the petitioner and as such the representation could not be decided by the State Government.

4. Learned Counsel for the petitioner was heard at length so also the learned A.G.P.

5. Only two points were urged by the learned Counsel for the petitioner. The first was that the State Government has not decided the representation of the petitioner and as such detention of the petitioner is illegal and is liable to be quashed. Counter Affidavit of Shri J.R.Rajput, Under Secretary to the Government of Gujarat in Home Department, discloses in Para : 3 that unsigned representation of the petitioner was sent by the Advocate and the said representation was sent back to the

Advocate for providing the signature of the petitioner on the representation. Thereafter no response was made and the representation was not sent back to the State Government after obtaining signature of the petitioner. Consequently there was delay in deciding the representation. Learned Counsel for the petitioner contends that it was not obligatory to send the representation under the signature of the petitioner detenu and it was sufficient that it was sent by the Advocate. However, the State Government might have entertained reasonable and genuine doubt about the genuineness of the representation and with a view to ascertain that it was really representation sent by the detenu through his Advocate that the State Government asked further information and compliance that signature of the detenu be obtained and then the representation be sent to the Government. No compliance was made thereafter. The State Government was not expected to maintain a copy of representation on its record. Since the original representation was returned to the Advocate of the petitioner which was not sent back again to the State Government, the State Government cannot be blamed for delay in taking decision on such representation. This ground, therefore, can not invalidate the detention order.

6. The second point urged by the learned Counsel for the petitioner has been that the activity of the petitioner can hardly be said to be prejudicial to public order nor by such activity the public order was ever disturbed.

7. There is marked distinction between law and order and public order and this distinction has been constantly emphasised by the Apex Court right from the case of *In re : Dr. Rammanohar Lohia*. The latest pronouncement of the Supreme Court in *Pushker Mukherjee v/s. State of West Bengal*, reported in A.I.R. 1970 sc 852 can be referred to for this distinction. It was laid down by the Apex Court that every act of assault or injury to a specific person does not lead to public order. When two people quarrel and fight and assault each other inside a house or in a street, it may be said that there is disorder but not public disorder. Such cases, according to the Supreme Court, can be dealt with under ordinary criminal law. The contravention of any law always affects order but before it can be said to affect public order, it must affect the community or the public at large. Minor breaches of peace which are purely local insignificance, according to the Apex court, can not constitute disturbance of public order.

8. A public order is said to have been disturbed when even tempo of life of the society in a particular locality is disturbed. It is with this test and background that the ground of detention is to be examined to find out whether there was disturbance of public order on account of prejudicial activities of the petitioner.

9. The activity of the petitioner, according to the ground of detention, can be classified under four heads. The first kind of activity of the petitioner is that he was involved and was apprehended in eight cases under the Prohibition Act which were duly registered and are pending against him between the year 1997 to 1998. It is difficult to appreciate that mere pendency of such cases or commission of such offences relating to country made liquor is likely to danger public order. Consequently these cases cannot be said to be disturbing the public order.

10. The second activity of the petitioner which is said to be prejudicial is that he is a bootlegger under section 2(b) of the PASA Act and that he indulges in sale of indigenous country made liquore. The Apex Court in the case of Piyush Kantilal Mehta v/s. Commissioner of Police, reported in AIR 1989 SC 491 had an occasion to consider similar activities of the petitioner and observed that it may be that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act, but merely because he is a bootlegger he cannot be preventively detained under the provisions of the Act unless, as laid down in sub-section 4 of Section 3 of the Act, his activities as a bootlegger affect adversely or are likely to affect adversely the maintenance of public order. Thus, on mere allegation that the petitioner is a bootlegger within the meaning of Section 2(b) of the Act he could not be kept under preventive detention.

11. The grounds of detention further show that the petitioner knew that his activity is likely to repeat in future, incident locally called as Latthakand. However, future possibility of this nature cannot be considered to disturb public order inasmuch as there is no disclosure in the grounds of detention that adulterated or poisonous country made liquore was ever sold by the petitioner. Thus, the apprehension in the mind of the Detaining Authority on this point was totally unfounded.

12. The next category of prejudicial activity against the petitioner is found to be in the incident dated 25.1.1998 and 5.2.1998.

13. So far as incident of 25.1.1998 is concerned the allegation is that the petitioner in the company of his associates brought quantity of liquor. The quantity remained unspecified. He asked witness to store the same in his house. The witness refused to oblige the petitioner whereupon he became excited. The witness was beaten by the petitioner and his associates. The witness was also threatend with knife. On the alarm of the witness people of the locality collected. Thereafter nothing substantial occurred, no injury of any kind was caused by the petitioner either to the witness whose identity has been concealed or to the public who gethered at the spot on the alarm raised by such witness. Such incident even remotely could not have disturbed even tempo of life of the locality in which such incident took place. Consequently it has no nexus with disturbance of public order.

14. The last incident dated 5.2.1998 is that the petitioner had beaten witnesses near Kolaba Chhapara suspecting that the said witness was police informant. The witness was threatened with knife. He started shouting, whereupon people gathered. He rushed towards the people with open knife and therefore people had heltered and scattered. This is again steriotype of allegation. There is no allegation that the petitioner inflicted any knife either to the witness or to any member of the crowd who gathered at the spot. This incident was also a private incident which could not disturb public order.

15. Thus, exhibition of dangerous weapon like knife and beating the witnesses, to my mind can not constitute disturbance in the even tempo of life in the locality. Hence, there is no disturbance of public order. Consequently the order of detention is bad in law and it cannot be sustained.

16. The petition, therefore, succeeds and is hereby allowed. The impugned order of detention dated 23.2.1998 (Annexure : A to the writ petition) is hereby quashed. The petitioner shall be released forthwith unless wanted in some other criminal case. sd/-

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